IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.551 OF 2000

Preeti Sharatchandra Shirodkar Petitioner

versus

University of Mumbai and three others Respondents

Mr.Mihir Desai, adv. for petitioner.

Mr.K.L.Gore, adv. for R-1.

Mr.I.A.Sayed, adv. for R-2.

Ms.S.M.Dandekar, adv. for R-3.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 11th January 2005

PC :

1. The petitioner is a Lecturer in English working in the second respondent college affiliated to the first respondent University. It is her case that she was first selected on 17th August 1992 by duly constituted University Selection Committee. She has obtained Masters Degree in English Literature with first class from University of Bombay. After her initial selection which was against a reserved post, advertisements have been given by the college

continuously every year until the last advertisement of 3rd August 1998. It is her case that during this period seven times the post was advertised and though her post was meant for reserved category candidate, no candidate from those categories became available. A candidate became available ultimately in pursuance of the advertisement dated 3rd August 1998. That time she feared that she will be dislodged by the person concerned i.e. respondent no.4 herein and therefore filed present petition.

2. In this petition she contended that advertisements for this post have been issued for the necessary number of times and yet a qualified person from the reserved category has not been found. Therefore, the respondents ought to be directed to begin the process of dereservation of the post of Lecturer in English in respondent no.2 college and at the end of that procedure, the petitioner ought to be confirmed from her initial date of appointment. The petition was admitted by Division Bench on 7th January 2002 and an interim relief granted earlier was confirmed whereby respondents are restrained from terminating services of petitioner as Lecturer in English. She has been continued since then with

all benefits such as increments and deductions for the purposes of Provident Fund etc..

3. An affidavit in reply has been filed by the Administrative Officer from the office of Joint Director, Higher Education. In para no.3 of the reply he has submitted that if candidates are not available from the reserved categories for six years, then in the 7th year, the post can be proposed for dereservation. Mr.Desai submits that as far as petitioner is concerned, she was first selected in 1992 and the Rules at that time permitted dereservation after five advertisements. However, in the present case, in any case, seven advertisements were already issued and therefore, he points out that there is no difficulty to the petitioner as such on this count.

4. It is further submitted in para no.4 of this reply that although the process for dereservation may begin, the petitioner cannot be automatically absorbed in the dereserved post. It is submitted that when a post is dereserved, it is first to be filled by absorption of surplus teachers available in the subjects in the list maintained at regional as well as state level. It is only

when no such surplus teacher is available that the post will be filled . But it will be now filled by nomination from open competition. It is only if the petitioner gets selected in that process that she can claim the post. It is further submitted that she has not cleared NET/SET and therefore, she is not qualified for appointment. Mr.Desai does not dispute that the petitioner has not cleared the necessary examinations. However, he submits in this behalf that under a Division Bench judgement, those who have been appointed prior to 2001 are not required to clear these examinations. The judgement is rendered in the case of Writ Petition No. 5782 of 2001 and companion petitions decided on 18th April 2003 (Coram : V.G.Palshikar & Smt.Nishita Mhatre, JJ.).

5. As far as respondent no.4 is concerned though he has been served, he has not appeared at the time of final hearing either himself or through his advocate. Mr.Desai further points out that respondent no.4 did not join though he was selected at that time since the college is reported to have applied for dereservation of the post. In any case, an interim order was passed by this Court and therefore, respondent no.4 has

not joined on that post.

6. Having noted the facts as above, what we find is that the petitioner has been teaching in respondent no.2 college from 1992 onwards i.e. for last over 12 years. Prima facie there is much substance in the submission of Mr.Desai that on all seven occasions advertisements were given and since no candidate was available the petitioner was continued against reserved post. His submission is that even as per the reply of the respondents, on the seventh occasion, the post ought to have been dereserved. This being the position, when respondent no.4 was selected and did not join, the college and the University ought to have moved for dereserving the post. We have noted the statement of Mr.Desai that at one point of time it was learnt that the college had moved such a proposal, however, Mr.Sayed appearing for respondent no.2 is not in a position to confirm whether any such proposal has been forwarded.

7. In the circumstances, considering the long years of service that the petitioner has put in, her qualifications, as also the reply filed by the Government that in the seventh year the post

was eligible for dereservation, in our view, ends of justice will be met if respondent no.2 college is directed to forward the proposal for dereservation of the post of Lecturer in English to the first respondent University, in case they have not forwarded any such proposal so far. They shall forward such a proposal within a period of eight weeks from today. On receiving such a proposal, the University will proceed to take steps to dereserve the post and complete necessary procedure at its end within six months thereafter and make it’s recommendations to respondent no.3 State Government in that behalf. We direct respondent no.3 State Government to complete the procedure at it’s end thereafter within one year on receiving the proposal from the University. We further clarify that during this entire period and until the appropriate decision is arrived at by the State Government, the petitioner shall continue to work in the post which she is presently occupying with all necessary benefits. We further clarify that in the event Government decides not to dereserve the post, any such decision will not be brought into force for a period of eight weeks after the decision is communicated to the college and petitioner. Rule is made absolute in above terms

with no orders as to costs.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)